In the Supreme Court of the United States

OCTOBER TERM 1936

No. 848

BRADLEY W. PALMER, PETITIONER

v.

GUY T. HELVERING, COMMISSIONER OF INTERNAL REVENUE

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FIRST CIRCUIT

MEMORANDUM FOR THE RESPONDENT

We do not oppose the granting of a writ of certiorari in this case.

The court below held (1) that where a corporation issues to its stockholders rights to acquire from it shares which its owns in other corporations, at a price substantially less than the fair market value of such shares, and the rights are exercised, there is a taxable dividend to the stockholders; and (2) that the amount of the dividend so received is to be determined as of the dates when the stock rights were exercised.

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The decision on the first question is in accord with the decisions of two other Circuit Courts of Appeals which have passed upon the taxability of the same stock rights as are involved in the present case. *Ramapo, Inc.*, v. *Commissioner*, 84 F. (2d) 986 (C. C. A. 2d); *Commissioner* v. *Mayer*, 86 F. (2d) 593 (C. C. A. 7th) now pending on petition for certiorari, No. 862, present term. The result reached in these cases is also in accord with the decision in *Metcalf's Estate* v. *Commissioner*, 32 F. (2d) 192 (C. C. A. 2d), in which the rights were sold instead of being exercised. We do not concur in petitioner's contention that there is a conflict of decisions on this point. In *Helvering* v. *Bartlett*, 71 F. (2d) 598 (C. C. A. 4th), the corporation did not distribute to its stockholders rights to acquire shares which it owned, but acted as the agent of the stockholders for the acquisition of rights to purchase shares in another corporation at a bargain price. In *Commissioner* v. *Cummings*, 77 F. (2d) 670 (C. C. A. 5th), the taxpayer was not a stockholder but a purchaser of rights, and the rights were for the purchase of stock in the corporation itself; in addition, the question was whether stock had been held for more than two years within the capital net gains provisions. In *Taplin* v. *Commissioner*, 41 F. (2d) 454 (C. C. A. 6th), and *Commissioner* v. *Van Vorst*, 59 F. (2d) 677 (C. C. A. 9th), there was no *pro rata* distribution to stockholders such as would constitute a taxable dividend, but instead there was a sale to

a particular stockholder or group of stockholders. While we believe that the result reached by the court below is correct and that there are no conflicting decisions, we recognize the importance of the question and the fact that the reasoning of the courts has not been wholly consistent.

The decision of the court below on the second question noted above is in direct conflict with the decision on that issue in the *Ramapo* case, *supra*. In the latter case, the Circuit Court of Appeals for the Second Circuit held that the date of receipt of the rights by the stockholders should be taken in determining the value of the dividend received. We believe that on this issue the decision in the *Ramapo* case is sound, and, accordingly, we plan to file a petition for certiorari in the present case on the question of the proper date as of which value should be determined. Consequently it is believed that the Court may wish to have before it the entire case even though on the question raised by the petitioner herein there is no conflict of decisions.

Respectfully submitted.

STANLEY REED,
Solicitor General.

APRIL 1937.

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